IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.141 OF 2007
WITH
CIVIL APPLICATION NO.208 OF 2007
IN
APPEAL FROM ORDER NO.141 OF 2007

Urja Developers and Beautification
Pvt. Ltd. .....Appellant.

V/s

Maharashtra State Road Development
Corporation Limited. .....Respondent.

Mr. Y.S. Jahagirdar, Senior Advocate with Mr. K.S. Dewal & Harshad Bhadbhade for the appellant.

Mr. P.P. Chavan i/b Mr. V.M. Bhate for the Respondent.

CORAM: A.M. KHANWILKAR, J.

DATE : 27th February, 2007

P.C:

1. Heard Counsel for the parties.

2. Admit. Counsel for the respondent waives service.

3. As short question is involved, appeal is taken up for final disposal forthwith by consent.

4. This appeal from order takes exception to the judgment and order passed by the City Civil Court, Bombay dated 23/1/2007 in Notice of Motion No.289 of 2007 in S.C. Suit No. 276 of 2007. By this order, Trial Court has rejected the prayer for ad-interim relief during the pendency of the Notice of Motion as pressed by the appellant - plaintiff. The only reason stated by the Trial Court is that, prima faice it appears that plaintiff's right to display advertisements is restricted and exclusive right of advertisement is not vested in plaintiff. No reference is made to any specific clause of the agreement for taking this view.

5. In the circumstances, the controversy will have to be considered in the light of provisions in the general conditions of contract stated in the agreement. Clause 1 of the agreement provides for scope of the work. It is not in dispute that advertisement for letting out the hoardings at the proposed place falls within the area allocated to the

appellant in terms of clause 1 of the agreement being falling in Segment No.III. Clause 5.2 of the agreement clearly provides that all the rights and benefits of the advertisement shall be "solely vested" in the concessionaire. Counsel for the appellant contends that the Trial Court, however, has glossed over these provisions while taking the view that there is no exclusive right to display advertisement in favour of the appellant.

6. Counsel for the respondent, however, contends that the said right is not absolute but is circumscribed by other conditions such as size of the hoardings and the like. Besides, it is contended that there were four hoardings in Segment No.III which were already let out when the agreement was executed in favour of the appellant on 25/03/2006 and the agreement had no concern with the said hoardings. The advertisement is in respect of one such hoardings which is known as "Unipole" in Segment No.III under Mahim inter-change area.

7. Suffice it to observe, at this ad-interim stage, the appellant - plaintiff has made out a case for grant of ad-interim relief on the basis of the agreement in particular clause 5.2 thereof. All these aspects

including the purport of clause 5.2 of the agreement which operates between the parties will have to be examined in detail. Those issues will have to be answered while considering the Notice of Motion on its own merits.

8. Accordingly, this appeal ought to succeed. The impugned judgment and order is set aside. Instead of ad-interim relief as prayed by the appellant, it is ordered that the respondent may process the tender documents already received but shall not take final decision in the matter in respect of advertisement in relation to the suit site i.e. Segment No.III of Mahim inter-change on C.T.S. No.A-791/792 and/or give possession of any hoarding therein to the third party until final decision of Notice of Motion. Counsel for respondent, on instructions, states that the respondent has not issued any advertisement in relation to Segment Nos. II and IV. In case such advertisement is to be issued during the pendency of Notice of Motion, the respondent shall take prior permission of the trial Court in that behalf. In so far as advertisements pertaining to hoardings falling in Segment No.III, presently, the respondent will abide by the injunction order passed in this appeal.

9. Counsel for the respondent points out that Notice of Motion is kept for hearing on 12/3/2007. The Trial Court shall dispose of the said Notice of Motion expeditiously and, in any case, not later than 09/04/2007. Parties, through Counsel, assure that they will extend full cooperation to the Trial Court for early disposal of the Notice of Motion and will not make request for adjournment on any count as the pleadings are substantially complete. If any further affidavit is to be filed by the parties, the same shall be filed in the lower Court on/or before 06/03/2007. It is made clear that Notice of Motion will be decided on its own merits uninfluenced by the observation made in the impugned order or for that matter is the present order. All the contentions are kept open.

10. Appeal is disposed of.

11. In view of the above order, Civil Application is disposed of.

A.M. KHANWILKAR, J.